

MUNICIPAL ENGINEERS, CONTRACTORS, AND MATERIALS.

unsanitary state, and to compel them to restore it to a proper state and for damages. The plaintiff wishes in effect to cross-examine Dr. Allen upon this report and to get him to explain it. The judgment of the court was delivered by Arnout, C. J., at the conclusion of the trial as follows: What the plaintiff wants here is merely discovery of evidence. Nothing has happened by reason of what Dr. Allen did. If you could show he did something in the course of his duty to cause the injury, he would be examinable. Dr. Allen may be an officer for certain purposes, but not such an officer as the defendants can examine for discovery. We think the appeal cannot succeed. Perhaps Galt, C. J., put it too broadly when he said that Dr. Allen was not an officer of the corporation except as respects his appointment. So far as what Dr. Allen did in this case was concerned, he was not examinable by the plaintiff for the purpose of discovery; the plaintiff cannot examine him for the purpose of discovering grounds or reasons on which he made his report. That would be trying to find out what evidence the witnesses would give at the trial. In view of what it is sought to examine Dr. Allen about, he is not an officer of the defendants. Appeal dismissed with costs.

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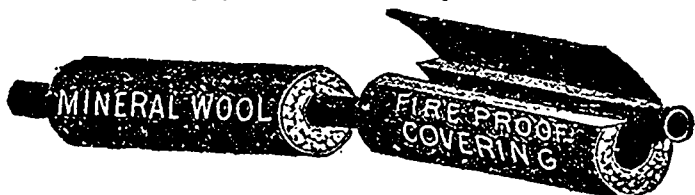
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